



January 23, 2004

## HOUSE BILL No. 1264

DIGEST OF HB 1264 (Updated January 21, 2004 3:34 pm - DI 105)

**Citations Affected:** IC 9-30.

**Synopsis:** Interlock ignition devices. Makes tampering with an ignition interlock device a Class B misdemeanor under certain circumstances. Requires a court, in granting probationary driving privileges to a DUI offender (except an offender with no prior conviction), to prohibit the offender from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device. Provides that a court may order installation of an ignition interlock device as an alternative to an administrative driver's license suspension.

**Effective:** July 1, 2004.

**Dvorak, Kuzman**

January 15, 2004, read first time and referred to Committee on Courts and Criminal Code.  
January 22, 2004, amended, reported — Do Pass.

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HB 1264—LS 7366/DI 107+



January 23, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1264

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 9-30-5-8 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) A person who **knowingly or**  
3 **intentionally** tampers with an ignition interlock device for the purpose  
4 of:

- 5 (1) circumventing the ignition interlock device; or  
6 (2) rendering the ignition interlock device inaccurate or  
7 inoperative;

8 commits a Class B ~~infraction~~ **misdemeanor**.

9 (b) A person who solicits another person to:

- 10 (1) blow into an ignition interlock device; or  
11 (2) start a motor vehicle equipped with an ignition interlock  
12 device;

13 for the purpose of providing an operable vehicle to a person who is  
14 restricted to driving a vehicle with the ignition interlock device  
15 commits a Class C infraction.

16 SECTION 2. IC 9-30-5-10 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) In addition to a

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1 criminal penalty imposed for an offense under this chapter or  
 2 IC 14-15-8, the court shall, after reviewing the person's bureau driving  
 3 record and other relevant evidence, recommend the suspension of the  
 4 person's driving privileges for the fixed period of time specified under  
 5 this section.

6 (b) If the court finds that the person:

7 (1) does not have a previous conviction of operating a vehicle or  
 8 a motorboat while intoxicated; or

9 (2) has a previous conviction of operating a vehicle or a  
 10 motorboat while intoxicated that occurred at least ten (10) years  
 11 before the conviction under consideration by the court;

12 the court shall recommend the suspension of the person's driving  
 13 privileges for at least ninety (90) days but not more than two (2) years.

14 (c) If the court finds that the person has a previous conviction of  
 15 operating a vehicle or a motorboat while intoxicated and the previous  
 16 conviction occurred more than five (5) years but less than ten (10)  
 17 years before the conviction under consideration by the court, the court  
 18 shall recommend the suspension of the person's driving privileges for  
 19 at least one hundred eighty (180) days but not more than two (2) years.  
 20 The court may stay the execution of that part of the suspension that  
 21 exceeds the minimum period of suspension and grant the person  
 22 probationary driving privileges for a period of time equal to the length  
 23 of the stay. ~~If the court grants probationary driving privileges under this~~  
 24 ~~subsection, the court may order that the probationary driving privileges~~  
 25 ~~include the requirement that the person may not operate a motor~~  
 26 ~~vehicle unless the motor vehicle is equipped with a functioning~~  
 27 ~~certified ignition interlock device under IC 9-30-8.~~

28 (d) If the court finds that the person has a previous conviction of  
 29 operating a vehicle or a motorboat while intoxicated and the previous  
 30 conviction occurred less than five (5) years before the conviction under  
 31 consideration by the court, the court shall recommend the suspension  
 32 of the person's driving privileges for at least one (1) year but not more  
 33 than two (2) years. The court may stay the execution of that part of the  
 34 suspension that exceeds the minimum period of suspension and grant  
 35 the person probationary driving privileges for a period of time equal to  
 36 the length of the stay. ~~If the court grants probationary driving privileges~~  
 37 ~~under this subsection, the court may order that the probationary driving~~  
 38 ~~privileges include the requirement that the person may not operate a~~  
 39 ~~motor vehicle unless the motor vehicle is equipped with a functioning~~  
 40 ~~certified ignition interlock device under IC 9-30-8.~~

41 (e) If the conviction under consideration by the court is for an  
 42 offense under:

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(1) section 4 of this chapter;

(2) section 5 of this chapter;

(3) IC 14-15-8-8(b); or

(4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

(f) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 3. IC 9-30-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) An order for probationary driving privileges granted under ~~section 12~~ of this chapter must include the following:

(1) A requirement that the person may not violate a traffic law.

(2) A restriction of a person's driving privileges providing for automatic execution of the suspension of driving privileges if an order is issued under subsection (b).

(3) A written finding by the court that the court has reviewed the person's driving record and other relevant evidence and found that the person qualifies for a probationary license under ~~section 12~~ of this chapter.

(4) Other reasonable terms of probation.

(b) If the court finds that the person has violated the terms of the order granting probationary driving privileges, the court shall order execution of that part of the sentence concerning the suspension of the person's driving privileges.

SECTION 4. IC 9-30-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) Except as provided in ~~subsection~~ **subsections (b) and (c)**, the court may, in granting probationary driving privileges under this chapter, also order that the probationary driving privileges include the requirement that a person may not operate a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

**(b) An order granting probationary driving privileges:**

**(1) under:**

**(A) section 12(a) of this chapter, if the person has a previous conviction that occurred at least ten (10) years before the conviction under consideration by the court; or**

**(B) section 12(c) of this chapter; or**

**(2) to a person who has a prior unrelated conviction for an**

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1 offense under this chapter of which the possession or  
 2 consumption of alcohol is an element;  
 3 **must prohibit the person from operating a motor vehicle unless the**  
 4 **vehicle is equipped with a functioning certified ignition interlock**  
 5 **device under IC 9-30-8.**

6 (c) A court may not order the installation of an ignition interlock  
 7 device on a vehicle operated by an employee to whom any of the  
 8 following apply:

9 (1) Has been convicted of violating ~~IC 9-30-5-1 or IC 9-30-5-2:~~  
 10 **section 1 or 2 of this chapter.**

11 (2) Is employed as the operator of a vehicle owned, leased, or  
 12 provided by the employee's employer.

13 (3) Is subject to a labor agreement that prohibits an employee who  
 14 is convicted of an alcohol related offense from operating the  
 15 employer's vehicle.

16 SECTION 5. IC 9-30-6-8 IS AMENDED TO READ AS FOLLOWS  
 17 [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Whenever a judicial officer  
 18 has determined that there was probable cause to believe that a person  
 19 has violated IC 9-30-5 or IC 14-15-8, the clerk of the court shall  
 20 forward:

21 (1) a copy of the affidavit; and

22 (2) a bureau certificate as described in section 16 of this chapter;  
 23 to the bureau.

24 (b) The probable cause affidavit required under section 7(b)(2) of  
 25 this chapter must do the following:

26 (1) Set forth the grounds for the arresting officer's belief that there  
 27 was probable cause that the arrested person was operating a  
 28 vehicle in violation of IC 9-30-5 or a motorboat in violation of  
 29 IC 14-15-8.

30 (2) State that the person was arrested for a violation of IC 9-30-5  
 31 or operating a motorboat in violation of IC 14-15-8.

32 (3) State whether the person:

33 (A) refused to submit to a chemical test when offered; or

34 (B) submitted to a chemical test that resulted in prima facie  
 35 evidence that the person was intoxicated.

36 (4) Be sworn to by the arresting officer.

37 (c) **Except as provided in subsection (d),** if it is determined under  
 38 subsection (a) that there was probable cause to believe that a person  
 39 has violated IC 9-30-5 or IC 14-15-8, at the initial hearing of the matter  
 40 held under IC 35-33-7-1:

41 (1) the court shall recommend immediate suspension of the  
 42 person's driving privileges to take effect on the date the order is

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entered;

(2) the court shall order the person to surrender all driver's licenses, permits, and receipts; and

(3) the clerk shall forward the following to the bureau:

(A) The person's license or permit surrendered under this section or section 3 or 7 of this chapter.

(B) A copy of the order recommending immediate suspension of driving privileges.

**(d) If it is determined under subsection (a) that there is probable cause to believe that a person violated IC 9-30-5, the court may issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 until the bureau is notified by a court that the criminal charges against the person have been resolved.**

SECTION 6. IC 9-30-6-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 8.5. (a) If the bureau receives an order recommending use of an ignition interlock device under section 8(d) of this chapter, the bureau shall immediately do the following:**

**(1) Mail a notice to the person's last known address stating that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 commencing:**

**(A) five (5) days after the date of the notice; or**

**(B) on the date the court enters an order recommending use of an ignition interlock device;**

**whichever occurs first.**

**(2) Notify the person of the right to a judicial review under section 10 of this chapter.**

**(b) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this section is not subject to any administrative adjudication under IC 4-21.5.**

SECTION 7. IC 9-30-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 9. (a) This section does not apply if an ignition interlock device order is issued under section 8(d) of this chapter.**

**(b) If the affidavit under section 8(b) of this chapter states that a person refused to submit to a chemical test, the bureau shall suspend the driving privileges of the person:**

**(1) for one (1) year; or**

**(2) until the suspension is ordered terminated under IC 9-30-5.**

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1        ~~(b)~~ (c) If the affidavit under section 8(b) of this chapter states that  
 2 a chemical test resulted in prima facie evidence that a person was  
 3 intoxicated, the bureau shall suspend the driving privileges of the  
 4 person:

5            (1) for one hundred eighty (180) days; or

6            (2) until the bureau is notified by a court that the charges have  
 7 been disposed of;  
 8 whichever occurs first.

9        ~~(c)~~ (d) Whenever the bureau is required to suspend a person's  
 10 driving privileges under this section, the bureau shall immediately do  
 11 the following:

12            (1) Mail a notice to the person's last known address that must state  
 13 that the person's driving privileges will be suspended for a  
 14 specified period, commencing:

15                    (A) five (5) days after the date of the notice; or

16                    (B) on the date the court enters an order recommending  
 17 suspension of the person's driving privileges under section 8(c)  
 18 of this chapter;

19            whichever occurs first.

20            (2) Notify the person of the right to a judicial review under  
 21 section 10 of this chapter.

22        ~~(d)~~ (e) Notwithstanding IC 4-21.5, an action that the bureau is  
 23 required to take under this article is not subject to any administrative  
 24 adjudication under IC 4-21.5.

25        ~~(e)~~ (f) If a person is granted probationary driving privileges under  
 26 IC 9-30-5 and the bureau has not received the probable cause affidavit  
 27 described in section 8(b) of this chapter, the bureau shall suspend the  
 28 person's driving privileges for a period of thirty (30) days. After the  
 29 thirty (30) day period has elapsed, the bureau shall, upon receiving a  
 30 reinstatement fee from the person who was granted probationary  
 31 driving privileges, issue the probationary license if the person  
 32 otherwise qualifies for a license.

33        ~~(f)~~ (g) If the bureau receives an order granting probationary driving  
 34 privileges to a person who has a prior conviction for operating while  
 35 intoxicated, the bureau shall do the following:

36            (1) Issue the person a probationary license and notify the  
 37 prosecuting attorney of the county from which the order was  
 38 received that the person is not eligible for a probationary license.

39            (2) Send a certified copy of the person's driving record to the  
 40 prosecuting attorney.

41        The prosecuting attorney shall, in accordance with IC 35-38-1-15,  
 42 petition the court to correct the court's order. If the bureau does not

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1 receive a corrected order within sixty (60) days, the bureau shall notify  
 2 the attorney general, who shall, in accordance with IC 35-38-1-15,  
 3 petition the court to correct the court's order.

4 SECTION 8. IC 9-30-6-10 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person  
 6 **against whom an ignition interlock device order has been issued**  
 7 **under section 8.5 of this chapter or** whose driving privileges have  
 8 been suspended under section 9 of this chapter is entitled to a prompt  
 9 judicial hearing. The person may file a petition that requests a hearing:

10 (1) in the court where the charges with respect to the person's  
 11 operation of a vehicle are pending; or

12 (2) if charges with respect to the person's operation of a vehicle  
 13 have not been filed, in any court of the county where the alleged  
 14 offense or refusal occurred that has jurisdiction over crimes  
 15 committed in violation of IC 9-30-5.

16 (b) The petition for review must:

17 (1) be in writing;

18 (2) be verified by the person seeking review; and

19 (3) allege specific facts that contradict the facts alleged in the  
 20 probable cause affidavit.

21 (c) The hearing under this section shall be limited to the following  
 22 issues:

23 (1) Whether the arresting law enforcement officer had probable  
 24 cause to believe that the person was operating a vehicle in  
 25 violation of IC 9-30-5.

26 (2) Whether the person refused to submit to a chemical test  
 27 offered by a law enforcement officer.

28 (d) If the court finds:

29 (1) that there was no probable cause; or

30 (2) that the person's driving privileges were suspended under  
 31 section 9(a) of this chapter and that the person did not refuse to  
 32 submit to a chemical test;

33 the court shall order the bureau to **rescind the ignition interlock**  
 34 **device requirement or** reinstate the person's driving privileges.

35 (e) The prosecuting attorney of the county in which a petition has  
 36 been filed under this chapter shall represent the state on relation of the  
 37 bureau with respect to the petition.

38 (f) The petitioner has the burden of proof by a preponderance of the  
 39 evidence.

40 (g) The court's order is a final judgment appealable in the manner  
 41 of civil actions by either party. The attorney general shall represent the  
 42 state on relation of the bureau with respect to the appeal.

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SECTION 9. IC 9-30-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court shall order the bureau to **rescind an ignition interlock device requirement or** reinstate the driving privileges of a person if:

(1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;

(2) the court finds the allegations in a petition filed by a defendant under section 18 of this chapter are true; or

(3) the person:

(A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and

(B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

SECTION 10. IC 9-30-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. If a court orders the bureau to **rescind an ignition interlock device requirement or** reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(2) of this chapter, the bureau shall also do the following:

(1) Remove any record of the **ignition interlock device requirement or** suspension from the bureau's recordkeeping system.

(2) Reinstate the privileges without cost to the person.

SECTION 11. IC 9-30-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9(b) of this chapter is entitled to **rescission of the ignition interlock device requirement or** reinstatement of driving privileges if the following occur:

(1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not

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held within ninety (90) days after the date of the person's initial hearing on the charges.

(2) The delay in trial or disposition of the charges is not due to the person arrested under IC 9-30-5.

(b) A person who desires **rescission of the ignition interlock device requirement or** reinstatement of driving privileges under this section must file a verified petition in the court where the charges against the petitioner are pending. The petition must allege the following:

(1) The date of the petitioner's arrest under IC 9-30-5.

(2) The date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(3) The date set for trial or other disposition of the matter.

(4) A statement averring the following:

(A) That the petitioner requested an early trial of the matter at the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(B) The trial or disposition date set by the court is at least ninety (90) days after the date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(C) The delay in the trial or disposition is not due to the petitioner.

(c) Upon the filing of a petition under this section, the court shall immediately examine the record of the court to determine whether the allegations in the petition are true.

(d) If the court finds the allegations of a petition filed under this section are true, the court shall order **rescission of the ignition interlock device requirement or** reinstatement of the petitioner's driving privileges under section 11 of this chapter. The reinstatement must not take effect until ninety (90) days after the date of the petitioner's initial hearing.

SECTION 12. IC 9-30-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. If a court orders the installation of a certified ignition interlock device under ~~IC 9-30-5-16~~ **IC 9-30-5** on a motor vehicle that a person whose license is restricted owns or expects to operate, the court shall set the time that the installation must remain in effect. However, the term may not exceed the maximum term of imprisonment the court could have imposed. The person shall pay the cost of installation.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1264, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 5. IC 9-30-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Whenever a judicial officer has determined that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, the clerk of the court shall forward:

(1) a copy of the affidavit; and

(2) a bureau certificate as described in section 16 of this chapter; to the bureau.

(b) The probable cause affidavit required under section 7(b)(2) of this chapter must do the following:

(1) Set forth the grounds for the arresting officer's belief that there was probable cause that the arrested person was operating a vehicle in violation of IC 9-30-5 or a motorboat in violation of IC 14-15-8.

(2) State that the person was arrested for a violation of IC 9-30-5 or operating a motorboat in violation of IC 14-15-8.

(3) State whether the person:

(A) refused to submit to a chemical test when offered; or

(B) submitted to a chemical test that resulted in prima facie evidence that the person was intoxicated.

(4) Be sworn to by the arresting officer.

(c) **Except as provided in subsection (d)**, if it is determined under subsection (a) that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, at the initial hearing of the matter held under IC 35-33-7-1:

(1) the court shall recommend immediate suspension of the person's driving privileges to take effect on the date the order is entered;

(2) the court shall order the person to surrender all driver's licenses, permits, and receipts; and

(3) the clerk shall forward the following to the bureau:

(A) The person's license or permit surrendered under this section or section 3 or 7 of this chapter.

(B) A copy of the order recommending immediate suspension of driving privileges.

**(d) If it is determined under subsection (a) that there is probable**

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cause to believe that a person violated IC 9-30-5, the court may issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 until the bureau is notified by a court that the criminal charges against the person have been resolved.

SECTION 6. IC 9-30-6-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8.5. (a) If the bureau receives an order recommending use of an ignition interlock device under section 8(d) of this chapter, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address stating that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending use of an ignition interlock device;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

(b) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this section is not subject to any administrative adjudication under IC 4-21.5.

SECTION 7. IC 9-30-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) **This section does not apply if an ignition interlock device order is issued under section 8(d) of this chapter.**

(b) If the affidavit under section 8(b) of this chapter states that a person refused to submit to a chemical test, the bureau shall suspend the driving privileges of the person:

(1) for one (1) year; or

(2) until the suspension is ordered terminated under IC 9-30-5.

~~(b)~~ (c) If the affidavit under section 8(b) of this chapter states that a chemical test resulted in prima facie evidence that a person was intoxicated, the bureau shall suspend the driving privileges of the person:

(1) for one hundred eighty (180) days; or

(2) until the bureau is notified by a court that the charges have been disposed of;

whichever occurs first.

~~(c)~~ (d) Whenever the bureau is required to suspend a person's

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driving privileges under this section, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address that must state that the person's driving privileges will be suspended for a specified period, commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending suspension of the person's driving privileges under section 8(c) of this chapter;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

~~(d)~~ (e) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this article is not subject to any administrative adjudication under IC 4-21.5.

~~(e)~~ (f) If a person is granted probationary driving privileges under IC 9-30-5 and the bureau has not received the probable cause affidavit described in section 8(b) of this chapter, the bureau shall suspend the person's driving privileges for a period of thirty (30) days. After the thirty (30) day period has elapsed, the bureau shall, upon receiving a reinstatement fee from the person who was granted probationary driving privileges, issue the probationary license if the person otherwise qualifies for a license.

~~(f)~~ (g) If the bureau receives an order granting probationary driving privileges to a person who has a prior conviction for operating while intoxicated, the bureau shall do the following:

(1) Issue the person a probationary license and notify the prosecuting attorney of the county from which the order was received that the person is not eligible for a probationary license.

(2) Send a certified copy of the person's driving record to the prosecuting attorney.

The prosecuting attorney shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order. If the bureau does not receive a corrected order within sixty (60) days, the bureau shall notify the attorney general, who shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order.

SECTION 8. IC 9-30-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9 of this chapter is entitled to a prompt judicial hearing. The person may file a petition that requests a hearing:

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- (1) in the court where the charges with respect to the person's operation of a vehicle are pending; or
- (2) if charges with respect to the person's operation of a vehicle have not been filed, in any court of the county where the alleged offense or refusal occurred that has jurisdiction over crimes committed in violation of IC 9-30-5.

(b) The petition for review must:

- (1) be in writing;
- (2) be verified by the person seeking review; and
- (3) allege specific facts that contradict the facts alleged in the probable cause affidavit.

(c) The hearing under this section shall be limited to the following issues:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-30-5.
- (2) Whether the person refused to submit to a chemical test offered by a law enforcement officer.

(d) If the court finds:

- (1) that there was no probable cause; or
- (2) that the person's driving privileges were suspended under section 9(a) of this chapter and that the person did not refuse to submit to a chemical test;

the court shall order the bureau to **rescind the ignition interlock device requirement or** reinstate the person's driving privileges.

(e) The prosecuting attorney of the county in which a petition has been filed under this chapter shall represent the state on relation of the bureau with respect to the petition.

(f) The petitioner has the burden of proof by a preponderance of the evidence.

(g) The court's order is a final judgment appealable in the manner of civil actions by either party. The attorney general shall represent the state on relation of the bureau with respect to the appeal.

SECTION 9. IC 9-30-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court shall order the bureau to **rescind an ignition interlock device requirement or** reinstate the driving privileges of a person if:

- (1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;
- (2) the court finds the allegations in a petition filed by a defendant

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under section 18 of this chapter are true; or

(3) the person:

(A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and

(B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

SECTION 10. IC 9-30-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. If a court orders the bureau to **rescind an ignition interlock device requirement or** reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(2) of this chapter, the bureau shall also do the following:

(1) Remove any record of the **ignition interlock device requirement or** suspension from the bureau's recordkeeping system.

(2) Reinstate the privileges without cost to the person.

SECTION 11. IC 9-30-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9(b) of this chapter is entitled to **rescission of the ignition interlock device requirement or** reinstatement of driving privileges if the following occur:

(1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not held within ninety (90) days after the date of the person's initial hearing on the charges.

(2) The delay in trial or disposition of the charges is not due to the person arrested under IC 9-30-5.

(b) A person who desires **rescission of the ignition interlock device requirement or** reinstatement of driving privileges under this section must file a verified petition in the court where the charges against the petitioner are pending. The petition must allege the following:

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- (1) The date of the petitioner's arrest under IC 9-30-5.
- (2) The date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
- (3) The date set for trial or other disposition of the matter.
- (4) A statement averring the following:
  - (A) That the petitioner requested an early trial of the matter at the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
  - (B) The trial or disposition date set by the court is at least ninety (90) days after the date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
  - (C) The delay in the trial or disposition is not due to the petitioner.

(c) Upon the filing of a petition under this section, the court shall immediately examine the record of the court to determine whether the allegations in the petition are true.

(d) If the court finds the allegations of a petition filed under this section are true, the court shall order **rescission of the ignition interlock device requirement or** reinstatement of the petitioner's driving privileges under section 11 of this chapter. The reinstatement must not take effect until ninety (90) days after the date of the petitioner's initial hearing."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1264 as introduced.)

DVORAK, Chair

Committee Vote: yeas 12, nays 0.

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